UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/C.5/WG(XI)/2
8 September 1987

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Special Committee on Preferences
Working Group on Rules of Origin
Eleventh session
Geneva, 23 November 1987
Item 3 of the provisional agenda

CONSULTATIONS ON CONCRETE PROPOSALS FOR IMPROVEMENTS IN THE RULES OF ORIGIN, INCLUDING GREATER HARMONIZATION AND SIMPLIFICATION

Priorities regarding improvements in rules of origin under the generalized system of preferences

Study by the UNCTAD secretariat

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GE.87-56578/7799a

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SUMMARY AND CONCLUSIONS

1. The study lists the improvements and proposed changes in the various origin systems reported at the tenth session of the Working Group on Rules of Origin and gives an account of any changes or developments which have since occurred in the GSP or related fields.

2. Although the Group has, over the past decade and more, devoted considerable time to the many and varied requests and proposals for harmonization, simplification and liberalization (or improvement) in the origin systems, positive agreements or undertakings leading to practical implementation of the necessary measures have been limited, fragmentary, or in some areas, nil. These disappointing results, culminating in the present position of stalemate, have occurred despite a considerable and convincing body of both theoretical and practical evidence that the existing systems are in need of improvement. The evidence, contained in secretariat studies and in reports, of difficulties encountered by preference-receiving countries, shows that the origin rules are excessively restrictive in their definition of "substantial transformation" and deprive goods of GSP, even though they have undergone extensive manufacturing operations. The lack of harmonization reduces the range of markets open to GSP exports, and the over-complexity of the rules leads to burdensome and costly administrative problems. Since the existence of these adverse effects upon the system has not been seriously challenged or disputed, the reasons for the lack of practical remedial action must therefore be sought elsewhere. These reasons may be found in the problems associated with the actual process of implementation of the changed rules. This aspect, which has not hitherto been taken into consideration, is therefore examined as a separate issue in relation principally to the preference-giving countries, which of necessity face the major tasks of implementation. The examination shows that problems of implementation vary in intensity with the nature and scope of each type of initiative and that in consequence some appear more susceptible of adoption and implementation than others.

3. The varying influence which implementation problems may have upon the selection of possible initiatives for adoption is then assessed in conjunction with a variety of other factors. These include the extent to which preference-receiving countries have pressed their requests for particular initiatives, the weight of supporting evidence and force of argument, the responses and reactions of preference-giving countries, together with any consensus which may have emerged in previous Group discussions. Reference is made to their value in terms of furthering the objectives of GSP. In making an overall assessment some extra weight is given to the implementation factor. In consequence, whilst account is taken of the other factors, initiatives which appear to present fewer implementation problems are in principle regarded as more suitable for early adoption than others and thus more worthwhile for detailed and possibly conclusive further consideration. The value of this approach is that it may enable the stalemate to be broken by the early adoption of an agreed initiative (even though this may be of lesser importance in terms of furthering GSP objectives) and may lead to the adoption of more significant initiatives.

4. The considered assessment of each possible initiative made on the basis described above has enabled each one to be placed in priority order of suitability for adoption. This list of priorities has necessarily been

established on a somewhat subjective basis; views will differ as to its acceptability. The suggested first order of priority - apart from the immediate question of the implementation of HS-based origin rules on 1 January 1988 (see chapter VI) includes simplification of documentation, harmonization of the percentage criterion, arrangements in favour of the least developed countries and a procedure for the consideration of requests for changes in particular rules. The second order of priority covers "donor country content", cumulation, and liberalization of the 5 per cent rule applied to certain goods by process-criterion countries. The third order of priority relates to liberalization measures of an across-the-board nature. If this method of approach were to be adopted, a list of priorities might then be agreed in the manner suggested.

5. The establishment of an agreed list of priorities would allow the Group to adopt a more systematic approach to its overall task and thus be able to facilitate its eventual completion. Hitherto the whole range of topics covered by the terms "harmonization, simplification and liberalization" (or, formerly "improvement") has been touched upon at each session. It has rarely been possible in the time available to discuss topics in depth and reach a conclusion. Nor has it been the custom to discuss topics from the point where the discussion ended at the previous session. A different approach is therefore suggested, based upon an agreed list of priorities. In brief, discussion in depth might concentrate initially only upon first priority initiatives, i.e. those assessed as being in principle the most capable of adoption and implementation. Unfinished or inconclusive discussion would be carried forward to form the basis of discussion at a subsequent session, as also would other lower priority initiatives. In this manner, some systematic consideration would be achieved, conclusions would be more likely to be reached and completion of the overall task of the Group would be facilitated.

6. The study highlights the practical problems associated with the introduction of HS-based origin rules by process-criterion preference-giving countries on 1 January 1988, and suggests that the Group should give immediate priority to finding agreed solutions to these problems. The study describes the type of differences and changes which will arise from the transposition into HS terms from the present CCCN terms. It considers difficulties that will arise for exporters and other traders in preference-receiving countries in understanding and applying the new rules. The flow of GSP trade may be seriously impeded as from 1 January 1988 unless suitable transitional arrangements are made and put into effect in good time. Proposals are considered as to the nature and duration of such arrangements. In brief, the proposal is that certificates of origin Form A should continue to be accepted, for a period of at least 12 months, even though they are completed in terms of the CCCN. It is suggested that all preference-giving countries concerned should adopt the same arrangements and apply them for the same period. The need for publicity and training regarding the new rules is discussed, together with arrangements for the treatment of any cases which may arise if, inadvertently, the new rules are found to differ in substance by comparison with present rules.

Chapter I

INTRODUCTION

7. In paragraph 6 of its resolution 1 (V) of 13 April 1973, the Special Committee on Preferences recommended that the Working Group on Rules of Origin be reconvened for the purpose of:

(a) Exchanging information on existing rules of origin;

(b) Examining the application of such rules;

(c) Considering concrete proposals, taking account particularly of the discussion at the fifth session of the Special Committee on Preferences regarding changes and improvements in the rules, including greater harmonization and simplification.

8. The United Nations Conference on Trade and Development, at its sixth session, agreed, in resolution 159 (VI), paragraph 18, that: "The rules of origin should be further liberalized and harmonized and their operation should be simplified. The rules for cumulative origin should also be improved". Paragraph 20 of the same resolution stated: "Special attention should be given to the particular problems of the least developed countries in undertaking the tasks mentioned above, with a view to providing the fullest possible duty-free treatment".

9. At its tenth session the Group agreed to recommend that, since its task had not been completed and in view of the need to provide a final response to the mandate in resolution 159 (VI), the Group should be reconvened for that purpose at a date to be decided by the Special Committee on Preferences at its fourteenth session.

10. In response to the recommendation referred to in paragraph 9 above, the Special Committee on Preferences, at its fourteenth session held in Geneva from 26 May to 4 June 1986, decided to recommend to the Trade and Development Board to reconvene the Working Group on Rules of Origin, as appropriate, in 1987.

11. In response to the mandates described above, this study was prepared with the following objectives:

(a) To update the 1985 review of the origin rules and ancillary procedures (TD/B/C.5/WG(X)/3) considered by the Group at its tenth session;

(b) To assist the Group in developing the principal agreement reached at its tenth session, i.e. that it should give further consideration as to how to break the present stalemate in pursuit of the ideal, namely the adoption of a "uniform and clear definition of the concept of substantial transformation", e.g. by means of an agreed programme of steps considered to be capable of adoption and implementation progressively in the future and bearing in mind Conference resolution 159 (VI);

(c) To establish a similar programme in regard to liberalization initiatives;

(d) To give immediate consideration and reach agreed solutions to the urgent practical problems which will arise from the transposition of the process-criterion origin rules from their present terms based upon the CCCN to those of the Harmonized System which will come into force on 1 January 1988.

Chapter II

RECENT CHANGES

12. The state of the various GSP origin systems in 1985, including an account of progress made up until that date in regard to harmonization, simplification and liberalization, was set out in UNCTAD secretariat report TD/B/C.5/WG(X)/3. This was taken into account in the Group's discussions which took place at the tenth session. During that session a number of changes in origin rules and ancillary procedures were brought to the notice of the Group. 1/ These, and other more recent changes, are indicated below.

A. Rules of origin

13. With effect from 1 January 1986, EEC introduced measures of liberalization and simplification in respect of its arrangements for cumulation of origin in favour of a number of regional economic groups. 2/

14. As regards transposition of its rules of origin into the Harmonized System at the Group's tenth session, EEC indicated its intention to combine the present Lists A and B into a single list. This would simplify presentation of the rules and facilitate the use of the system by traders and administrations. The EFTA preference-giving countries expressed their intention for the most part to follow this concept.

B. Documentation arrangements

15. In 1985 the United States Customs Service authorized its district directors to waive the Form A requirements for shipments seeking GSP duty-free treatment if they were satisfied that the shipments met the rules of origin requirements for United States GSP purposes.

16. As from 1 July 1986 it is no longer a mandatory United States Government requirement for Form A to be certified by a designated government authority in the beneficiary country, except in those cases in which the United States and the beneficiary country have a bilateral verification agreement. 3/

17. With effect from 1 February 1987, Sweden does not require the completion of Box 2 of Form A. The value limit for the use of Form APR has been increased to SKr 16,000. The value limit for products sent as small packages has been increased to SKr 1,200 and the limit for products forming part of a traveller's luggage has been increased to SKr 3,400. 4/

18. As from 1 January 1987, Austria no longer requires Form A to bear an indication that GSP origin has been acquired through application of cumulation provisions. 5/

Chapter III

PROBLEMS RELATING TO IMPLEMENTATION OF INITIATIVES

19. Whilst there may be some consensus of opinion within the Group that most of the initiatives previously discussed would, to varying degrees, result in advancement in achieving the objectives of GSP, experience shows that this consensus has rarely led to adoption of practical measures. The prospects of adoption seem to be related to a number of factors, amongst which an important item is the practical difficulty which has to be overcome in securing implementation in the countries concerned. A review of these difficulties may help the Group to understand why a situation of stalemate has arisen, and from that point to agree on how it might be overcome. For example, it may be possible to identify those initiatives which would not only result in significant improvements in the rules consistent with the requests of preference-receiving countries, but also those where the practical problems involved in the implementation seem to be more readily capable of solution. Having completed that task, the Group could then give detailed consideration to the formulation of a list of initiatives that are likely to be adopted and implemented.

A. Problems for preference-receiving countries

20. In the case of most preference-receiving countries, problems associated with practical implementation are likely to centre around the necessity for dissemination of publicity and the provision of training so as to secure correct application of the changed rules. Manufacturers, exporters and other traders, as well as certification and other authorities responsible for supervision and verification of the origin systems, would need to be given guidance. The administrative effort required may be onerous for some countries, especially the least developed, but enhancement of GSP benefits would compensate. It seems unlikely that preference-receiving countries would experience difficulties in regard to other results of adoption of initiatives, e.g. economic or industrial effects, since these would normally be beneficial, although some initiatives might be open to criticism as being discriminatory as between preference-receiving countries. It also seems unlikely that there would be any need to introduce or amend domestic legislation in order to implement initiatives, except in some cases in regard to powers of verification and control.

B. Problems for preference-giving countries

21. A wider range of more difficult problems may be encountered by preference-giving countries, depending upon the nature and anticipated effects of each initiative considered for adoption.

22. Several initiatives, whether explicitly or not, would have the direct effect of increasing the volume of GSP imports. On the other hand, the main effect of other initiatives may be seen as leading to a reduction in the costs for preference-receiving countries incurred by the establishment and maintenance of GSP entitlement. This would indirectly increase the value of the preferential margin, a particularly valuable benefit in view of the diminished margins of preference available under GSP, without necessarily (or significantly) increasing GSP imports.

23. The first type of initiative might be seen by a preference-giving country as having a potentially disruptive influence on its domestic market, even though any increased flow of imports might be regulated by means of safeguards such as quotas, ceilings or other forms of quantitative restriction. Consultation with domestic interests such as manufacturers and trade associations may show that they would consider themselves to be adversely affected by increased competition in the domestic market. There may also be adverse social consequences, for example in terms of employment prospects. In the case of some intiatives, however (e.g. in regard to "donor-country content"), any such effects may be counter-balanced to some extent by an increase in the volume of exports from a preference-giving country.

24. The second type of initiative referred to in paragraph 22 may also have the other, though secondary and largely incidental, effect of increasing GSP imports, but such increases are likely to be relatively insignificant, especially since it is the small exporting countries that would benefit most from these measures. Adoption should accordingly be likely to present less severe problems of the type mentioned in paragraph 23. In the case of an initiative aimed at harmonization, for example, if implemented on the basis of the more liberal ot the rules being harmonized, the overall result may be to reduce the volume of imports into one preference-giving country whilst increasing them in another. This would of course help to achieve a greater equality of "burden sharing" amongst preference-giving countries, a concept which was regarded as important by the preference-giving countries at the inception of GSP.

25. Apart from the considerations mentioned above, the adoption of most initiatives, whether or not aimed at increasing GSP imports, is likely to necessitate legislative action of a primary or subordinate nature. Where legislative action is required, parliamentary debate may be involved, thus giving an opportunity for wide discussion of the proposed adoption, when its consistency with national economic or trade policies, and its impact on the domestic market, may come into question. Where, however, adoption of an initiative is considered to involve merely technical changes, approval of legislation might be a formality with little or no debate. Even so, Governments would need to choose carefully the time when it would be opportune to introduce legislation so as to minimize possible difficulties. In the case of some initiatives, the authorities concerned may have the power to make changes simply by administrative action, thus easing the problems of adoption. This might especially be the case with initiatives relating to documentation and ancillary procedures.

Chapter IV

FACTORS AFFECTING SELECTION OF INITIATIVES FOR ADOPTION

26. The selection of initiatives for adoption will be influenced not only by the considerations indicated in chapter III, but also by other factors, such as:

(a) The nature and strength of the requests for change by preference-receiving countries and responses by preference-giving countries; and

(b) Any conclusions reached by the Working Group at previous sessions.

An assessment of these factors and of the difficulties indicated in chapter III as they relate to harmonization, simplification and liberalization is given below, firstly in general terms and secondly in relation to a series of specific initiatives relating to harmonization and simplification and then to liberalization. An indication is given in regard to each initiative as to its adoptability and its place in terms of priorities.

A. Harmonization and simplification initiatives

1. General

27. Neither harmonization nor simplification has the principal objective of permitting the use of a higher proportion of third-country inputs in production of GSP goods. Simplification, per se, need have no such effect at all. Harmonization, on the other hand, may do so in some circumstances, for example when one rule is harmonized with another which is the more liberal. However, even when a degree of increased liberality is involved it may be confined within narrow limits. So far as economic and trade policies are concerned, well-constructed harmonization initiatives which are largely neutral in effect in terms of GSP trade promotion are likely to be capable of adoption without arousing domestic objection in preference-giving countries, whether or not legislation may be required. For example, the degree of harmonization so far achieved by the process-criterion preference-giving countries appears not to have provoked significant opposition or other difficulties in the countries concerned. Harmonization does, nevertheless, require extensive co-operation and administrative effort by preference-giving countries. It also necessitates agreement as to which origin rule should form the basis of harmonization, which might be a sensitive topic, particularly where a degree of liberalization may result.

28. Simplification is mainly a matter of improving and clarifying the formulation and presentation of existing rules, or, in the case of documentation and ancillary procedures, eliminating unnecessary details and possibly waiving documentation requirements in particular circumstances. Administrative effort is required to consider and prepare simplification measures, but since no alteration of the substances of the rules need be involved, adoption of initiatives in this field appears to present few difficulties in preference-giving countries, since economic or trade policies are unaffected, whether or not legislation is required.

29. As regards discussions within the Working Group, the continuing need for harmonization and simplification as an important means of achieving the objective of GSP has been a recurring theme at most sessions. At the eighth session it was recognized that while progress had been made in harmonizing and simplifying the process criterion, further improvement and harmonization measures were desirable in regard to the percentage criterion 6/ (bearing in mind that harmonized rules were adopted by Bulgaria, Czechoslovakia, Hungary, Poland and the USSR in 1980). The Working Group further agreed at that session that priority should be given to measures which would promote the improvement, harmonization and simplification of the percentage criterion and that action should "aim firstly at considering some basic concepts" which could commonly be employed by preference-giving countries using the percentage criterion. At the tenth session the Working Group reiterated its view of harmonization and simplification by agreeing to strive for "the adoption of a uniform and clear definition" of the concept of "substantial transformation". 7/ In this area, therefore, it is evident that a high degree of consensus was achieved. However, this has not produced the desired practical results, in particular in regard to the percentage criterion.

2. Particular initiatives

(a) Rules of origin

30. As regards the origin rules themselves, as distinct from documentation and ancillary procedures, the Working Group has agreed on the "ideal to be strived for" and has undertaken to consider further steps which might be taken in pursuit of that objective. The difficulty lies in reaching an agreement as to the nature of particular steps which might be acceptable. A variety of possible initiatives in regard to both percentage and process criteria have been discussed in detail in document TD/B/C.5/WG(X)/3, paragraphs 92-98. The main target of requests for harmonization and simplification has been, and continues to be, the various interpretations of the percentage criterion and the adoption of the common term "FOB export price" (by both process and percentage criterion countries). The major obstacle to the adoption of some initiatives, e.g. in regard to the percentage criterion, may be the domestic problems confronting preference-giving countries of the type discussed in chapter III, where harmonization would result in a change in the substance of the rules, leading to liberalization in some countries. The major problem for other initiatives would relate to the administrative and legislative aspects. For some preference-giving countries it may be possible to foresee a time when steps towards harmonization and simplification could be taken in conjunction with, or consequent upon, adoption of measures in other related fields, e.g. the conversion of national tariffs to the Harmonized System of tariff nomenclature or work done elsewhere. 8/ If this is so, and bearing in mind that the various interpretations of the percentage criterion are as unharmonized as they were when the GSP rules of origin systems were introduced a decade or so ago, the countries concerned may wish to consider afresh the prospects for harmonization in this area and reach some agreement as to whether and when some concrete progress might be achieved.

(b) Documentation and ancillary procedures

31. Questions relating to the harmonization and simplification possibilities generally concern the requirements for completion of the certificate of origin Form A. The Box 8 requirements have aroused a number of requests for

simplification, notably because of difficulties caused by the multiplicity of symbols from which the exporter must make the correct selection. It is pertinent to recall that the range of symbols is now much greater than it was when Form A was introduced in 1970. 9/ There is also the requirement of the United States and other countries 10/ that the exact percentage figures relating to each shipment must also be inserted. The recent changes introduced by the United States (see paragraphs 15 and 16), relating firstly to a discretionary waiver of the need for presentation of Form A and secondly to the abolition of the requirement that Form A must be validated by a designated government authority (except where the United States and the preference-giving country have a bilateral verification agreement), suggest that there is scope for simplification of documentation procedures. In considering a range of initiatives, provided a satisfactory control system is maintained, few, if any, implementation difficulties for preference-giving countries should arise. There will be no change in the substance of origin rules.

32. Preference-receiving countries have requested the abolition of Box 8, a request which was "noted" by the preference-giving countries at the tenth session. The major benefit foreseen in the abolition of Box 8 is that completion of the document would be simpler and less confusing for exporters, and the possibility of making technical errors reduced. Further, it is not certain that the detail required to be inserted serves much useful purpose. In the case of Australia and New Zealand, completion of Box 8 is not required. As regards CCCN references, insertion of the correct numbers may imply knowledge or compliance with the relevant process criterion rule on the part of the signatory. In any event, validation of the certificate by a competent authority, which then certifies that the declaration of origin by the exporter is correct, should ensure its accuracy. So far as the requirement for insertion of the percentage figure is concerned, there are many complaints about the extra-administrative and other costs, in particular accounting costs, which this causes. To reduce or remove these costs would increase the value of the GSP preferences without significantly increasing GSP imports. Further, the relaxation in United States documentation requirements suggests that the percentage details are no longer regarded as crucial by the United States authorities.

33. From the foregoing discussion, consideration of possible initiatives might consist of either total abolition of the requirement to complete Box 8 (following the Australian and New Zealand example), or alternatively of reducing the range of symbols from the present eight to three, i.e. one for the percentage criterion, one for the process-criterion and one for the wholly produced criterion. If either alternative were to be adopted the notes on the reverse side of the Form A would require amendment; in the case of the second alternative references to the CCCN would be replaced by references to the HS.

B. Liberalization

1. General

34. Initiatives include direct measures to allow an increase in the proportion of permitted imported inputs, whether across-the-board (i.e. in favour of all products), limited to trade sectors or to particular goods, or in favour of particular countries. Indirect measures include the extension or

improvement of cumulation, of "donor-country content", or liberalization which may result inadvertently from some measures of harmonization or simplification.

2. Particular initiatives

(a) Direct measures

35. Since initiatives of direct liberalization are expressly designed to alter the rules so as to allow the use of a greater proportion of third-country inputs, an increase in the volume of GSP-entitled trade should ensue. The overall size of the increase would vary as between initiatives in accordance with their scope (classes of goods affected), depth (size of the increase in permitted third-country inputs), and the ability of the preference-receiving countries to respond to the liberalization. However, increases in the volume of GSP imports may in some cases be subject to control by quantitative limitations imposed by preference-giving countries.

36. It would be in the interest of preference-receiving countries to support the adoption of liberalization measures (whilst maintaining the requirement that transformation should nevertheless be substantial) whether across-the-board or confined to particular sectors of trade or to particular goods which they find to be subject to especially restrictive rules. For preference-giving countries, the problems of compatibility with national and trade policies and domestic interests would become more or less acute, depending upon the depth and scope liberalization. Problems of implementation may thus be correspondingly severe in the shorter term. Accordingly it may be realistic to confine immediate attention to minor liberalization measures.

37. As regards past discussions, preference-receiving countries have presented extensive and repeated requests for liberalization. Where requests have related to rules applied to particular goods, these have often been supported by factual evidence of difficulties which have been encountered. Responses by preference-giving countries appear to have been mainly non-committal, especially in regard to requests for general measures. Offers to give consideration to requests regarding particular rules have not appeared to result in any liberalization. Liberalization changes that have been made relate to cumulation (United States and EEC) and least developed countries (Canada and EEC). The EFTA preference-giving countries said at the tenth session that they would consider requests for regional cumulation arrangements. It may also be noted that EEC has introduced liberalization measures in favour of ACP countries, namely a system of derogation and more recently an increase in the permitted import content of the goods in chapters 84 through 92 of the CCCN (see paragraph 41).

38. However, more recently at the tenth session, and in response to Conference resolution 159 (VI), requests to liberalize the percentage criterion resulted in an agreement to "consider the proposal further". Requests to change the formulation of the percentage criterion to FOB export price were "noted". "Further consideration" was to be given to the general adoption of the concept of "donor-country content". Requests for the application of full global cumulation met with a discouraging response from the countries concerned.

(i) Across-the-board

39. The Working Group has agreed (tenth session, agreed conclusions (4)) to further consider a proposal to increase the imported inputs allowed to be used under the percentage criterion. A detailed case in support of such a measure, also covering a comparable liberalization of the process criterion, is set out in a report by the secretariat (TD/B/C.5/WG(X)/3). Concrete supporting evidence given recently by a number of preference-receiving countries (see TD/B/C.5/WG(X)/2 and Add.1) shows that wide ranges of goods which have undergone substantial manufacturing operations in those countries, have failed to obtain preference because of excessively strict origin rules. 11/ It will, however, be recalled that the agreed conclusion referred to included the statement that some preference-giving countries considered the existing percentages to be appropriate.

40. Against this background might be set the question of the implementation problems for preference-giving countries as discussed in chapter III. Whilst the case for across-the-board liberalization has been both well justified and established and such a measure is thus a suitable candidate for adoption, it seems likely to present difficult problems of acceptability in terms of present national economic and trade policies. It would also seem logical that such a measure would need to be applied by the process-criterion preference-giving countries, although for those countries the introduction of HS-based rules on 1 January 1988 may mean that an across-the-board liberalization measure could not realistically be considered until the new rules had been in place for some time. Whilst, therefore, the Group agreed to further consider an initiative in respect of the percentage criterion, a favourable outcome seems more likely as a longer-term prospect (see paras. 61-62).

(ii) Trade sector

41. Requests for liberalization on a trade sector basis have been presented by many preference-receiving countries in connection with the List B limitation of 5 per cent applied by process-criterion countries in regard to goods of chapters 84-92. The most recent requests are contained in documents TD/B/C.5/102 (paras. 46, 54 and 68) and TD/B/C.5/WG(X)/2 (para. 9) and Add.1. At its eighth session, the Working Group merely noted earlier requests; at the tenth session current requests were also noted and the preference-giving countries concerned stated that this particular rule was "a minor adjunct to the basic origin rules which provided for higher levels of imported inputs". Whilst this response appears to be unfavourable, it does not seem to be entirely negative. Furthermore, EEC has recently changed the origin rules applied to the EEC/ACP Convention so as to increase the 5 per cent limit to 10 per cent. 12/.

42. This request for liberalization is affected to some extent by the "donor-country content" rule, which in the case of the process-criterion countries is applied only by Japan (with exceptions in regard to about 17 CCCN headings). Under that rule the use is encouraged of parts and components supplied by the preference-giving country for the manufacture of goods in preference-receiving countries and return to the former country. Since goods of chapters 84-92 by their nature frequently need to incorporate parts and components supplied by preference-giving countries, the donor-country content rule is particularly useful. Thus the application of that rule by EEC and the

EFTA preference-giving countries would go some way to meeting the request for liberalization of the 5 per cent rule, as also would removal of the exceptions to Japan's version of the donor-country content rule.

43. However, the liberalization of the EEC/ACP rules means that any related problems of an economic or trade policy nature have been resolved by EEC, at any rate in the ACP context, and may also imply that any similar problems in the GSP context are capable of solution. If so, the question of the adoption of an initiative (or alternatively an initiative in regard to "donor-country content") might become a matter of priority.

(iii) Particular goods

44. Liberalization in favour of particular goods, where the rules have been found to be excessively strict, have been requested by individual preference-receiving countries at several sessions of the Group, usually supported by factual details. Further examples of problems in this connection appear in TD/B/C.5/WG(X)/2 (pages 10, 11, 12, 17, 21, 22, 27, 29 and 31). The response of preference-giving countries has been to offer to consider evidence of particular problems and difficulties. At the tenth session it was suggested that it might be useful to hold informal consultations between preference-giving and receiving countries on specific problems. It is not clear to what extent such bilateral discussions were held, nor whether any results were achieved, either in consequence of the informal discussions or of the requests contained in TD/B/C.5/WG(X)/2.

45. If, as appears probable, little progress has been made, the Group might like to consider how more positive results might be achieved. One difficulty may simply be that the Group has not been clearly established as a forum for the presentation and solution of specific origin rule difficulties experienced by individual countries. In consequence it may appear to preference-receiving countries that there is little purpose in bringing forward difficulties for discussions during sessions of the Group. If this were changed, for example by means of the addition of an item on the agenda, and experts, particularly those from preference-receiving countries, attended sessions equipped with detailed briefs, the ensuing discussions might prove to be more productive, even though initially they would probably be aimed solely at establishing the facts. A definite response might have to be given later after further consideration, especially where domestic interests might need to be consulted. An initiative along these lines may prove to be helpful and capable of ready agreement by the Group.

(iv) Least developed countries

46. The preference-giving countries at the tenth session of the Working Group expressed their willingness to give sympathetic consideration to "particular difficulties encountered by preference-receiving least developed countries". 13/ EEC and Canada have introduced special arrangements, i.e. a system of derogation in the case of EEC and a general liberalization measure in the case of Canada. The statement by the EFTA preference-giving countries regarding cumulation (see para. 37) is also relevant. The other preference-giving countries, it appears, will give "sympathetic consideration" in line with the undertaking given.

47. The least developed countries will thus need to take the initiative, for example by collecting evidence of any "particular difficulties" which are encountered. This may in itself present a major problem because of the administrative resources required to identify problems related to origin systems, involving sources of supplies of materials, description of manufacturing processes, determination of percentage, etc. In this connection it is relevant to note that since the introduction of the EEC system of derogation on 1 January 1984, only one application has been made and no decision has yet been taken. 14/ Applications have to be supported by a substantial amount of detail. 15/

48. Whilst, in the case of a general liberalization measure of the type adopted by Canada, it would be difficult to draw any firm conclusions as to its effects upon least developed countries, such a measure might act as an inducement towards the establishment of new industries and encouragement for those already set up. It might not, however, solve particular difficulties caused by individual rules, for which a system of derogation might be the appropriate solution. Without more information as to how in general origin rules affect least developed countries and in what ways the rules might best be altered, it is difficult to determine what special arrangements might be preferable.

49. Given the sympathetic approach of all preference-giving countries, the Working Group may be able to reach a consensus as to the action which may be taken, for example as to whether further study is necessary in order to find a sound and relevant basis for special treatment of least developed countries, or whether the type of initiative already adopted by EEC and Canada might be followed by other preference-giving countries.

(b) Indirect measures

(i) Cumulation

50. The call for improvements for the rules for cumulation (Conference resolution 159 (VI)) applies essentially to preference-giving countries which use the process criterion (they apply partial regional cumulation) and the United States (which applies full regional cumulation). The other preference-giving countries already apply full global cumulation.

51. The former group of countries, at the eighth session, expressed doubts about the merits and the administrative feasibility of full global cumulation, despite its successful operation by other countries. At the eighth session it was agreed that experience should be sought as to the use made of existing facilities in order to "facilitate discussion". 16/ The replies to the resulting questionnaire showed that some countries benefited from partial regional cumulation but that overall, for a variety of reasons, the use made of cumulation in general was limited. Nevertheless the requests for full global cumulation were repeated, it being argued that this would strengthen mutual economic co-operation. In response, at the tenth session, the preference-giving countries concerned referred to the "serious and burdensome administrative and legal problems" involved in full global cumulation.

52. The consideration of an initiative has thus reached an inconclusive and somewhat unfavourable stage. Since many preference-giving countries apply full global cumulation and must therefore have overcome any administrative and

legal problems, it might be expected that this experience would lead the other countries to reconsider their position. Furthermore, although full global cumulation would clearly have a beneficial effect for the preference-receiving countries in terms of their interdependence and economic co-operation, experience does not suggest that it would generate a substantial increase in GSP imports. Domestic problems of the type discussed in chapter III do not therefore seem to account for the present stalemate. A full and frank discussion of the problem at the forthcoming session might enable the difficulties of the countries concerned to be understood and a solution found.

(ii) "Donor-country content"

53. The Working Group agreed at its tenth session to give the question of the extension of the concept of "donor-country content" further consideration. The merits of the concept are discussed in detail in document TD/B/C.5/WG(X)/3, paragraphs 84 and 85. The preference-giving countries concerned may subsequently have further examined this subject, taking into account its compatibility with their economic and trade policies. Acceptance of an initiative would encourage the use of components and parts, etc., supplied by preference-giving countries for manufacture into finished products in preference-receiving countries and subsequent return to the supplying countries. This effect would to some extent compensate in trade balance terms for any increase in GSP imports and may thus make an initiative more acceptable. Indeed, some preference-giving countries may consider they are disadvantaged, in terms of possible export benefits, by the absence of a donor-country content rule.

54. Acceptance would to some extent liberalize the restrictive effects of the 5 per cent rule applied to goods of chapters 84-92 by process-criterion countries (see para. 42 above). The preference-giving countries concerned, after further consideration, may come to the conclusion that they can fall into line with the other preference-giving countries and accept an initiative for adoption.

Chapter V

LIST OF PRIORITIES

A. Immediate priority - HS-based rules

55. The first and immediate priority for the Working Group must be finding solutions to the practical problems which will arise following the introduction of process-criterion origin rules based upon the HS on 1 January 1988. These problems are discussed in chapter VI.

B. Priorities in respect of harmonization, simplification and liberalization

56. The approach followed in chapter IV leads to two possible courses of action. Firstly, it enables a list to be formulated showing each of the various possible initiatives in an order of priority for consideration in accordance with a realistic assessment of their potential for adoption and implementation. Secondly, such a list, if agreed upon by the Working Group, would enable the latter's task to be pursued in a systematic manner both at the eleventh and any subsequent session.

57. Whilst opinions may differ as to the order of priority, it is evident that those initiatives which are aimed principally at the removal or reduction of administrative burdens should present few obstacles in terms of practical implementation. Although such initiatives may be of less direct importance in terms of helping to achieve the objectives of GSP, their adoption would be especially helpful as a means of ending the present stalemate. They might thus be given early priority.

58. Conversely, those initiatives which are directly aimed at increasing GSP imports would raise questions of compatibility with national economic or trade policies and are thus likely to prove more difficult for preference-giving countries to implement. Consideration of such initiatives is, however, unavoidable in view of the need to enhance achievement of the objectives of the GSP.

59. Following these lines of thought and having regard to the considerations discussed in chapter IV, initiatives under the headings of simplification and harmonization might be selected as candidates for early priority. This could include simplification of documentation and also harmonization of origin criteria, in particular the percentage criterion. Special arrangements in favour of the least developed countries, although not falling within exactly the same category, may also qualify for early priority for reasons stated in paragraph 48. A procedural change resulting in an improved system for consideration of requests for changes in particular rules might also be included in this category, since the question of national implementation does not arise.

60. A list of second priority initiatives might include those liberalization measures in which the volume of imports involved may be of minor proportions and thus, when considered with other effects, may be acceptable to preference-giving countries. The list would thus include extension of the concept of donor-country content (where the donor country may see some compensating economic advantage), extension of full global cumulation (which would help to induce a climate favouring economic co-operation between

preference-receiving countries) and liberalization of the 5 per cent rule applied to goods of chapters 84-92 by process-criterion countries (which EEC has conceded in favour of the ACP countries).

61. The third and lowest degree of priority might be given to the direct across-the-board liberalization measures. These, although in the view of most preference-receiving countries justified on grounds of principle and experience, are likely to be the most sensitive in terms of current economic and social policies. Their further consideration might thus be deferred.

62. To summarize, the suggested order is:

First priority

1. Simplification of documentation

2. Harmonization of the percentage criterion

3. Special arrangements in favour of the least developed countries

4. An improved system for consideration of requests for changes in particular rules

Second priority

1. Extension of the concept of donor-country content

2. Extension of full global cumulation

3. Liberalization of the 5 per cent rule applied by process-criterion countries to goods of chapters 84-92 or the corresponding chapters of the HS.

Third priority

1. Liberalization of the percentage criterion (and the process-criterion) across-the-board.

C. Future procedure

63. Reverting to the second point raised in paragraph 56, hitherto at each session of the Working Group the complete range of topics falling within the terms "harmonization, simplification and liberalization" has been brought under discussion. However, within the time available at a single session it has been difficult for any one item to be considered fully and in depth and brought to a final conclusion. Furthermore, partly because of long intervals between sessions there has been loss of continuity and topics which have remained unresolved at one session have not necessarily been taken up at the same point at the next session.

64. The proposed list of priorities could enable the Working Group and the Special Committee on Preferences as appropriate to pursue their task in a systematic manner by concentrating attention on specific items in order of priority, conducting a detailed discussion of the first item on the list and, if time permits, reaching conclusions on that item in as definite a formulation as possible. Incomplete discussions, or items not considered, would be carried forward for attention at any subsequent sessions. The attraction of this proposal is that completion of the tasks confronting the Working Group may ultimately be achieved.

Chapter VI

ARRANGEMENTS FOR THE INTRODUCTION OF ORIGIN RULES BASED UPON THE HARMONIZED SYSTEM

A. General

65. The most urgent question relates to the introduction of rules transposed from the CCCN to the HS by the countries using the process criterion (Japan, EEC and the EFTA preference-giving countries). This will happen on 1 January 1988. At the same time many national customs tariffs will be changed to the HS. There are significant differences between the CCCN and HS. For example, the former has 1,011 four digit items in 99 chapters; the latter has 1,241 items in 96 chapters. While some HS four digit items cover exactly the same range of goods as the corresponding CCCN item, and sometimes bear the same number, many do not. Many HS items include goods which have been removed from one or more CCCN items. Thus, importers, exporters and other traders will need to examine the HS nomenclature closely in order to determine the post-1 January 1988 classification.

B. Transposition of origin rules

66. The differences between the two systems have caused the preference-giving countries to examine the process-criterion rules to determine how they are affected by the HS, e.g. the extent of transformation resulting from a change of HS heading as compared with a change of CCCN heading, and also the impact upon the goods descriptions and processes specified in Lists A and B. These comparisons have resulted in numerous changes from the existing lists both in descriptions of goods and in specified processes so as to preserve the undertaking given by EEC and supported by EFTA. The former undertook to ensure that "as far as the economic content was concerned, the effect of the transposition would be neutral, in line with the agreed conclusions adopted by the Special Committee at its thirteenth session". 17/ The EFTA preference-giving countries said that for the most part they would follow the main principles and methods adopted by EEC". 18/ The EEC rules will be "recast" in as clear and simple terms as possible. Furthermore, Lists A and B will be replaced by one single list. It is understood that Japan is adopting the same approach as EEC and EFTA in regard to both transposition and to presentation of Lists A and B as a single list. It should be noted that there will be a larger number of items contained in this new single list than the approximately 300 items in the current Lists A and B.

C. Transitional arrangements

67. It is apparent from the foregoing that although the substance of the process-criterion rules will correspond closely after 1 January 1988 with those currently in force, in many cases they will be expressed in substantially different terms and under different heading numbers. Thus while goods exported currently under GSP arrangements as being of GSP origin may, by virtue of the neutral transposition, be considered to qualify after 1 January 1988, "new" manufacturers and exporters in preference-receiving countries and "new" goods will have to assess eligibility under HS terms. Furthermore, for all goods, certificates of origin (Form A) in respect of importations into preference-giving countries on and after 1 January 1988 will have to contain a reference to the correct HS heading.

68. Although in some instances an HS heading number will correspond exactly to the CCCN heading and description and be subject to the same process rule, many differences will exist. An extensive publicity and information campaign will therefore be needed in preference-receiving countries aimed at familiarization with the HS and its implications for the GSP origin rules. Such a campaign will be especially important for those preference-receiving countries, the majority, which will not for the present be using the HS for their national tariffs. It would however be unrealistic to suppose that familiarization with the new rules will be achieved over a short period, however early it is started or however well it is planned. There is also the documentation problem (para. 67 above) which will become apparent on and after 1 January 1988 unless special arrangements are made. Insertion of a CCCN number or an incorrect HS number in Form A could lead to rejection of GSP claims, retention of goods by customs pending production of a correct certificate, or release on deposit or bond. GSP trade will be impeded and considerable trouble caused to authorities in preference-giving countries and to importers and exporters. The need for transitional arrangements seems clear in the interests of all countries. It is also essential that any such arrangements should be agreed and in force in good time.

69. As regards the nature of transitional arrangements, it is inevitable that certificates will continue to bear references to CCCN numbers for some time after 1 January 1988. Since in principle the rules after 1 January 1988 will be the same in substance as before that date, there would be little risk for preference-giving countries in continuing to accept CCCN numbers. Such an arrangement would probably be necessary for a minimum of at least 12 months. To avoid confusion amongst exporters in preference-receiving countries, it is highly desirable for the transitional arrangements to be the same for all preference-giving countries and to continue for the same period.

D. Publicity

70. The need for publicity in regard to the HS version of the process-criterion rules applies mainly to the preference-receiving countries where organizations, manufacturers and exporters will need to be informed about the rules which apply to the goods with which they are concerned. They will need to be aware of the correct HS heading number, whether an additional or different origin rule applies and, if so, whether the goods satisfy the new specified process. This will be of particular significance in the case of goods which under current rules do not appear in Lists A and B but which under HS rules, because "change of tariff heading" is considered not to be appropriate, are required to undergo an additional or different process.

71. Preference-giving countries may intend to prepare publicity material containing the origin rules set out in HS terms, together with explanatory notes. If such material were made available, distribution could be the responsibility of the preference-receiving countries. Alternatively it might be considered whether the UNCTAD secretariat should be requested to prepare publicity material, with appropriate assistance.

72. In addition, consideration might be given as to whether the difficulties and problems arising from the new rules will be sufficiently widespread to justify the organization of seminars especially aimed at giving appropriate information. The extent of the difficulties can be more accurately assessed when complete texts of the rules are widely available.

E. Cases where transposition results in a change of substance

73. Whilst the transposition exercise is being conducted on the basis of "neutrality", i.e so as to avoid any change in economic effects as between HS-based rules and the CCCN-based rules, it appears inevitable that some cases will be discovered where a change has occurred to the detriment of current GSP entitlement. 19/ For example, an export product may be made from a range of imported materials all of which currently fall within CCCN headings which differ from the CCCN heading appropriate to the finished product. The latter is thus of GSP origin under the "change of heading" rule. Under the HS nomenclature it may occur that one of the materials or components is classified under the same HS heading as the finished product. This fact may pass unnoticed in the transposition exercises and the product will thus be found later to be disqualified. It clearly is a difficult, if not impossible, task for all such cases to be identified during the transposition exercises, since comprehensive knowledge of the material and components used in manufacture and/or classification cannot be expected. Furthermore, the conversion of an existing additional rule appearing in Lists A and B into an HS-based rule having precisely the same effect would present the same problems.

74. Thus, as the new HS-based rules are put into effect over an initial period by manufacturers and others in preference-receiving countries, it will be discovered that in some cases goods which were GSP-entitled under the CCCN-based rules no longer qualify. Clearly remedial action should be taken as quickly as possible so as to avoid or reduce any damage to GSP trade. Consequently some special mechanism might be set up so that claims that particular goods have suffered a loss of GSP entitlement may be examined without delay and, if the claims are substantiated, entitlement restored. Claims might be prepared by appropriate authorities in preference-receiving countries, giving the relevant details and presented to competent authorities in those preference-giving countries which apply the rule in question. It would be desirable for the substance of any claims and of the subsequent outcome to be brought to the notice of all preference-receiving countries. The services of the UNCTAD secretariat might be appropriate for this purpose. In the interest of speed, formalities should be kept to a minimum.

Notes

1/ See TD/B/C.5/102

2/ See TD/B/C.5/102, para. 22

3/ "Guide to the United States Generalized System of Preferences (GSP)", July 1986, Office of the United States Trade Representative, Executive Office of the President, Washington D.C., July 1986, page (VII).

4/ TD/B/GSP/SWEDEN/7.

5/ TD/B/GSP/AUSTRIA/18.

6/ TD/B/C.5/76, para. 52, agreed conclusions (1) and (5).

7/ TD/B/C.5/102, para. 83, agreed conclusion (2).

8/ The United States representative at the tenth session hoped that the work done in the Customs Co-operation Council, in preparing a comparative study of origin rules, would form a "basis for developing principles that might be included in a future agreement to harmonize and simplify origin practices" (TD/B/C.5/102, para. 41).

9/ TD/B./AC.5/38, appendix I, annex B.

10/ Bulgaria, Czechoslovakia, Hungary, Poland and the USSR.

11/ See the annex to the present study which gives details of current examples of such cases.

12/ EEC, Official Journal, L 86, 31 March 1986, p. 138.

13/ TD/B/C.5/102, para. 83, agreed conclusion (8).

14/ The application was by Bangladesh in respect of a textile product.

15/ See TD/B/C.5/WG(X)/3, annex IV.

16/ TD/B/C.5/76, para. 52, agreed conclusion (7).

17/ TD/B/C.5/102, para. 25.

18/ Ibid., para. 28.

19/ Errors in transposition of tariffs into HS terms are foreseen in the GATT and a review clause has been proposed (GATT document TAR/W/68, 15 December 1986).

Annex

EXAMPLES OF GOODS WHICH HAVE UNDERGONE EXTENSIVE PROCESSING BUT DO NOT SATISFY THE RULES OF ORIGIN a/

1.	GOODS:	Shotgun cartridges (CCCN heading 97.03).
	Countries of destination:	Japan and EEC.
	Origin rule:	Change of tariff heading and import materials must not exceed 40 per cent of price of finished product.
	Imported materials:	Four detonating and explosive powders and plastic bodies.
	Manufacturing process:	Cartridge cases are made from brass plate, which is stamped into cup shape, drawn out and trimmed, then filled with lead core. Cartridges are then completed with imported materials. Imported materials account for 27 per cent of the selling price.
	Problem:	One imported component does not undergo a change of tariff heading in the manufacturing process so that goods do not qualify.
2.	GOODS:	Manmade fibre yarn (CCCN headings 51.01 and 56.05).
	Country of destination:	Australia.
	Origin rule:	Domestic labour and materials must be at least 50 per cent of the ex-works cost.
	Imported materials:	Polypropylene resin; pelletized pigments.
	Manufacturing process:	Extrusion process to produce amorphous fibre. This is then drawn, texturized, stretched and crimped, followed by a chenille process.
	Problem:	Domestic raw materials and labour account for only 17.04 per cent of the ex-works costs, so the goods do not qualify.

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a/ Information supplied by a preference-receiving country, March 1987.

3.	GOODS:	Electronic security lamps (CCCN heading 85.20).
	Countries of destination:	Canada and Japan.
	Origin rule:	Imported materials must not exceed 40 per cent of the ex-factory price (Canada) or the FOB export price (Japan). A change of tariff heading must occur for export to Japan.
	Imported materials:	Various lamps, bulbs and transformers.
	Manufacturing process:	Assembly and glueing of plastic and metal parts with resistor; assembly and soldering of electrical and electronic components, winding of coils, final assembly, colouring of bulb, installation of glass fibre and final testing.
	Problem:	Imported materials account for 53 per cent of the sales price so the goods do not qualify.
4.	GOODS:	Polypropylene film (CCCN heading 39.02).
	Country of destination:	EEC
	Origin rule:	Change of tariff heading except for non-originating materials of heading 39.02 not exceeding 20 per cent of the ex-works price, provided that the value of all non-originating materials used does not exceed 50 per cent of the ex-works price.
	Imported materials:	Homopolymer, copolymer, polymer (all 39.02).
	Manufacturing process:	Extrusion, cooling longitudinal stretching, transversal stretching, corona treatment, rolling.
	Problem:	Value of imported materials (39.02) is 28 per cent of ex-works price; the materials have not undergone a change of tariff heading. The goods do not qualify.